

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: : CHAPTER 7
:
MARC SMITH :
:
:
DEBTOR : BKY. NO. 13-15239JKF

MOTION OF TRUSTEE FOR TURNOVER OF DEBTOR'S ASSET
PURSUANT TO 11 U.S.C. §542

Terry P. Dershaw, Esquire ("Trustee"), the Chapter 7 Trustee for the Estate of Marc Smith ("Debtor"), by and through his counsel, Fox Rothschild LLP, respectfully requests the entry of an Order directing the turnover of the Debtor's 2013 Subaru LE Outback vehicle pursuant to 11 U.S.C. §542. In support thereof, the Trustee respectfully submits as follows:

1. This Motion is brought pursuant to 11 U.S.C. §542.
2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §1134.
3. This is a "core proceeding" within the meaning of 28 U.S.C. §157(b)(2)(E).
4. On June 13, 2013, the Debtor filed a Voluntary Petition for relief under Chapter 7 of title 11 of the United States Bankruptcy Code.
5. Shortly thereafter, the Trustee was appointed, which appointment remains in effect.
6. The Debtor filed an Amended Schedule B listing a 2013 Subaru LE Outback vehicle, VIN No. 4S4BRDSC102201733 ("Vehicle"), with a value of \$35,817.95. The Kelly Blue Book value of the Vehicle is \$23,835.00.

7. The Debtor's Schedule D reflects that Subaru Motors holds a lien on the Vehicle in the amount of \$16,649.00.

8. The Debtor's Schedule J reflects total monthly payments for two automobiles of \$2,200.00.

9. Upon information and belief, the amount currently owed on the Vehicle is approximately \$12,000.00. The monthly payments by the Debtor on the Vehicle has created appreciation in the value of the Vehicle. Therefore, the Trustee avers that the difference between the amount owed on the Vehicle and its Fair Market Value represents equity to the Estate in the amount of \$11,835.00.

10. By letter dated January 18, 2014, demand was made upon the Debtor for the turnover of the non-exempt equity in the Vehicle. A copy of the letter is attached hereto as Exhibit "A".

11. The Debtor is allowed an exemption in the Vehicle of \$3,450.00, leaving a balance of \$8,385.00 available for creditors.

12. The Trustee hereby requests the turnover of the amount of non-exempt equity in the Vehicle pursuant to §542 of the Bankruptcy Code. The increase in value since the date of Petition represents property of the Bankruptcy Estate pursuant to 11 U.S.C. §541.

13. Pursuant to 11 U.S.C. §521(a)(3) and (4), the debtor is required to cooperate with the trustee to enable the trustee to perform the trustee's duties and to surrender to the trustee all property of the estate and any recorded information relating to property of the estate.

14. The Debtor has failed to comply with these required statutory duties.

15. Section 542 of the Bankruptcy Code gives a trustee the power to seek turnover of all property of the debtor's estate. 11 U.S.C. §542. Section 542 states, in pertinent part, that:

An entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

11 U.S.C. §542.

WHEREFORE, the Trustee prays for the entry of an Order directing that the Debtor pay the Court approved amount of equity in the 2013 Subaru LE Outback vehicle within ten (10) days or, in the alternative, for turnover of the Vehicle within ten (10) days, and for such other and further relief as is just.

FOX ROTHSCHILD LLP

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